

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN PETTITT; MURPHY LABRADOR  
CORPORATION; MAX GSD TRUST OF 1996 BY  
BARBARA MUSSER, TRUSTEE,

Plaintiffs,

v.

JOHN CHIANG, individually and in his  
capacity as STATE CONTROLLER OF THE  
STATE OF CALIFORNIA,

Defendant.

No. C 07-5854 CW

ORDER DENYING  
PLAINTIFF'S  
MOTION FOR AN  
EXTENSION OF TIME  
TO FILE A NOTICE  
OF APPEAL

On April 22, 2008, the Court granted Defendant's motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court found that amendment would be futile. Therefore, the dismissal was with prejudice and judgment entered in Defendant's favor on that date. On July 10, 2008, Plaintiffs John Pettitt, Murphy Labrador Corporation and Max GSD Trust of 1996 filed a motion for an extension of time to file a notice of appeal in this case. Defendant opposes the motion. The motion is decided on the papers; the August 14, 2008 hearing is VACATED.

1 Pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A), a  
2 notice of appeal "must be filed with the district clerk within 30  
3 days after the judgment or order appealed from is entered."  
4 Moreover, the district court may only extend the time to file a  
5 notice of appeal if "a party so moves no later than 30 days after  
6 the time prescribed by this Rule 4(a) expires; and . . . that  
7 party shows excusable neglect or good cause." Fed. R. App. P.  
8 4(a)(5)(A).

9 Because judgment was entered on April 22, 2008, the original  
10 deadline for filing of a notice of appeal was May 22, 2008 and the  
11 deadline by which Plaintiffs could have filed a motion for an  
12 extension of time to file a notice of appeal was June 22, 2008.  
13 The Ninth Circuit has held that Rule 4(a)(5)(A)'s "requirement that  
14 motions for extension be filed within thirty days of the original  
15 deadline is mandatory and jurisdictional." Alaska Limestone Corp.  
16 v. Hodel, 799 F.2d 1409, 1411 (9th Cir. 1986) (per curiam).  
17 Therefore, Plaintiffs' failure to comply with that deadline  
18 "prohibits either the district court or [the Court of Appeal] from  
19 reviving their right to appeal." Id.

20 For the foregoing reason, the Court DENIES Plaintiffs' motion  
21 for an extension of time (Docket No. 22).

22 IT IS SO ORDERED.

23  
24 Dated: 8/4/08

  
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CLAUDIA WILKEN  
United States District Judge